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Attorneys for Plaintiff
FEDERAL INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL INSURANCE
COMPANY, a New Jersey Company

Plaintiff,

v.

EFFECTUS GROUP,LLC, a
California Limited Liability Company

Defendants.

Case No: 5:24-cv-2025

**PLAINTIFF FEDERAL INSURANCE
COMPANY'S COMPLAINT FOR:**

1.) NEGLIGENCE

**2.) APPARENT AGENCY AND/OR
OSTENSIBLE AGENCY**

[DEMAND FOR JURY TRIAL]

1 **PLAINTIFF’S COMPLAINT**

2 Plaintiff, by and through the undersigned counsel, hereby demands judgment
3 against the Defendant and complains against them as follows:

4 **THE PARTIES**

5 1. Plaintiff, Federal Insurance Company, is a corporation organized and
6 existing under the laws of the State of New Jersey and with its principal place of business
7 in New Jersey at the address set forth above.

8 2. At all times relevant hereto, Plaintiff provided insurance coverage to
9 Mondee Holdings, LLC, Mondee, Inc., and other related affiliate and subsidiary
10 companies (collectively hereinafter “Plaintiff’s insured”), doing business in San Mateo,
11 California.

12 3. Defendant, Effectus Group, LLC (hereinafter “Effectus”), is a limited
13 liability corporation organized and existing under the laws of the State of California and
14 with its principal place of business in California at the address set forth above.

15 **JURISDICTION AND VENUE**

16 4. This Court has jurisdiction in this action pursuant to 28 U.S.C. §1332(a)(2),
17 as the matter involves a dispute between corporations that are citizens of different states;
18 namely, Plaintiff in the State of New Jersey and Defendant in the State of California, and
19 the amount in controversy, exclusive of interests and costs, exceeds \$75,000.00.

20 5. Venue is proper in this District pursuant to 28 U.S.C. §1391(a) as a
21 substantial part of the events or omissions giving rise to this action occurred in this
22 jurisdiction and Defendant resides in this jurisdiction.

23 **STATEMENT OF FACTS**

24 6. On or before November 30, 2021, Defendant and Plaintiff’s insured
25 conducted business together and, pursuant to such, Defendant sent Plaintiff’s insured
26 invoices requesting that Plaintiff’s insured pay for the goods/services provided by
27 Defendant.
28

1 7. Additionally, on or before November 30, 2021, Defendant allowed its email
2 and/or computer system to be improperly accessed and/or otherwise compromised by one
3 or more unauthorized individuals acting with malintent (“bad actors”).

4 8. On or before November 30, 2021, the bad actors used the email account
5 associated with Defendant to improperly communicate with Plaintiff’s insured regarding
6 the invoices Defendant had previously requested Plaintiff’s insured pay.

7 9. On or before November 30, 2021, the bad actors fraudulently instructed
8 Plaintiff’s insured in a deceptive manner to pay an invoice by wiring money to a specific
9 bank account that was not actually associated with Defendant.

10 10. The bad actors implied and represented to Plaintiff’s insured that the bank
11 account to which the monies would be wired belonged to Defendant, when in fact, it was
12 controlled by the bad actors.

13 11. Plaintiff’s insured had no reason to suspect that Defendant had allowed such
14 bad actors to improperly access Defendant’s email account and, therefore, Plaintiff’s
15 insured believed it was communicating with Defendant, and that the bank account
16 belonged to Defendant.

17 12. However, in an abundance of caution, Plaintiff’s insured called and texted
18 an employee of Defendant to confirm the payment instructions. Defendant failed to
19 advise that the payment instructions were fraudulent.

20 13. On November 30, 2021, Plaintiff’s insured made a wire payment, to the bank
21 account controlled by the bad actors.

22 14. On December 1, 2021, Plaintiff’s insured discovered that the bank account
23 did not belong to the Defendant but was unable to retrieve any of the transferred funds.

24 15. Plaintiff’s insured subsequently submitted an insurance claim to Plaintiff for
25 the loss of such funds and, upon payment of said claim, Plaintiff became subrogated to
26 the rights of its insured to seek recovery of the funds from any responsible party to extent
27 of said payments. Additionally, Plaintiff’s insured assigned to Plaintiff its rights to seek
28 recovery of its self-insured retention and uninsured losses.

1 **COUNT I - NEGLIGENCE**

2 16. The Defendant owed Plaintiff's insured a duty to use, maintain, and secure
3 its computer and email systems in a reasonable manner so as to not harm Plaintiff's
4 insured.

5 17. It was foreseeable to Defendant that the failure to properly and securely use
6 and maintain its computer and email systems could create an unreasonable risk of harm
7 to Plaintiff's insured, and/or others with whom Defendant communicated with regularly
8 in the course of its business concerning payment of monies.

9 18. Defendant breached this duty through its employees, agents (whether
10 apparent, actual, or by estoppel), servants, technicians, vendors, and/or subcontractors by
11 the following negligent acts or omissions:

- 12 a. failing to prevent bad actors from improperly accessing and
13 commandeering its computer and email systems;
- 14 b. failing to install or employ adequate security mechanisms, safeguards,
15 or protocols so as to prevent bad actors from improperly accessing
16 and compromising its computer and emails systems;
- 17 c. failing to adequately instruct those with access and management
18 rights to such systems how to properly use, maintain, and secure such
19 systems in a safe and appropriate manner;
- 20 d. failing to warn Plaintiff's insured and others that its computer and
21 email systems were improperly accessed or compromised or that the
22 payment instructions were fraudulent;
- 23 e. otherwise failing to prevent the bad actors from using its computer
24 and email systems to perpetrate this scheme against Plaintiff's insured
25 when Defendant was in the best position to prevent it;
- 26 f. representing and/or holding out to Plaintiff's insured that users of the
27 email account that Defendant allowed to be improperly
28 accessed/compromised by the bad actors had authority or were
otherwise agents of Defendant with respect to the payment of
invoices.

1 19. As a direct and proximate result of the negligence and carelessness of
2 Defendant, the Plaintiff's sustained and incurred a loss totaling \$166,806.83.

3 **WHEREFORE**, Plaintiff respectfully requests that this Honorable Court enter
4 judgement in its favor and against the Defendant for damages in an amount in excess of
5 \$166,806.83, together with interest, costs and such other relief as this Honorable Court
6 deems appropriate under the circumstances.

7 **COUNT II - APPARENT AGENCY AND/OR OSTENSIBLE AGENCY**

8 17. Defendant's lack of ordinary care allowed bad actors to access and use its
9 email account system to communicate with Plaintiff's insured regarding the payment of
10 invoices.

11 18. Defendant had represented and/or held out to Plaintiff's insured (implicitly
12 and/or explicitly) that users of such email account system had authority to act as a
13 representative, employee, or otherwise as an agent of Defendant with respect to its
14 business affairs, including the payment of invoices.

15 19. Accordingly, at all times relevant hereto, because of Defendant's actions or
16 omissions, Plaintiff's insured, without fault of its own, reasonably believed the bad
17 actor(s) were a representative, employee, or otherwise an agent of Defendant and
18 Plaintiff's insured followed the payment instructions given by the bad actor(s), leading
19 to the loss.

20 20. Therefore, Defendant is liable to Plaintiff for its loss of \$166,806.83 for
21 the acts of the bad actors under the theories of apparent agency and/or ostensible
22 agency.

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1 **WHEREFORE**, Plaintiff respectfully requests that this Honorable Court enter
2 judgement in its favor and against the Defendant for damages in an amount of
3 \$166,806.83, together with interest, costs and such other relief as this Honorable Court
4 deems appropriate under the circumstances.

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7 DATED: April 3, 2024

KAEDIAN LLP

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9 By: Henry L. Whitehead
10 KATHYRINE C. MCBROOM
11 HENRY L. WHITEHEAD
12 Attorneys for Plaintiff
13 **FEDERAL INSURANCE**
14 **COMPANY**

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16 **JURY DEMAND**

17 Plaintiff demands a trial by jury on all issues so triable.

18
19 DATED: April 3, 2024

KAEDIAN LLP

20
21 By: Henry L. Whitehead
22 KATHYRINE C. MCBROOM
23 HENRY L. WHITEHEAD
24 Attorneys for Plaintiff
25 **FEDERAL INSURANCE**
26 **COMPANY**